

OPINION
72-396

September 14, 1972 (OPINION)

Mr. Vincent A. LaQua
State's Attorney
Wells County
Fessenden, ND 58438

Dear Mr. LaQua:

This is in response to your inquiry with regard to the appointment by the Sheriff of Deputies.

You inform us that it has been the policy of the sheriff to appoint six or seven individuals as special deputies on an annual basis with their appointment terminating on December 31. They sign an oath of office which is retained by the sheriff. You indicate that these special deputies are usually police officers in different cities in the sheriff's county and assist the sheriff on accidents and investigations.

You call out attention to section 11-15-02 of the North Dakota Century Code. Your question is stated as:

"Can the sheriff make these annual appointments or is he limited to appointment only in case of an emergency?"

We note basically two statutory provisions for appointment of sheriff's deputies, i. e., sections 11-10-11 and 11-15-02 of the 1971 Supplement to the North Dakota Century Code. These statutes provide:

"11-10-11. APPOINTMENT AND SALARY OF DEPUTIES AND CLERKS. The number and salaries of deputies, clerks, and assistants for the county auditor, county treasurer, sheriff, register of deeds, county judge, and clerk of the district court shall be fixed by a resolution of the board of county commissioners. None of the officers mentioned in this section shall appoint as his deputy any other officer mentioned in this section nor the deputy of any such officer. The board of county commissioners upon written recommendation and approval of the state's attorney may appoint one or more assistant state's attorneys or clerks and fix their compensation in the same manner as in the case of deputies and clerks in other county offices. The work of such assistant state's attorneys shall be assigned by the state's attorney."

"11-15-02. SHERIFF MAY APPOINT SPECIAL DEPUTIES - COMPENSATION. In case of any emergency, the sheriff may appoint and qualify special deputies in such numbers as in his judgment are required by the conditions. Each special deputy shall receive as compensation for his services the sum of not to exceed twelve dollars per day and the same mileage as is allowed to regular deputies, such amounts to be paid by the county. The sheriff shall have the sole power of appointing such special deputies and may remove them at pleasure."

We note further the provision of the first sentence of section 11-11-05 of the North Dakota Century Code, as follows:

"11-11-05. MEETINGS OF BOARD - TIME AND PLACE. The board of county commissioners shall meet and hold sessions for the transaction of business at the courthouse, or at the usual place of holding court, on the first Tuesday in January, April, July and October of each year, and may adjourn such meetings from time to time. * * * "

While, in some circumstances, a broader definition of the term "emergency" may be considered (See Black's Law Dictionary, Revised fourth Edition, page 615), we note in *Sisters of Mercy of Devils Lake v. Ramsey County*, 68, N.D. 344, 279 N.W. 759 at pages 763, 764, our Supreme Court informing us that:

" * * * An emergency is 'an unforeseen combination of circumstances which calls for immediate action.' Webster. See, also, *Colfax County v. Butler County*, 83 Nebraska 803, 120 N.W. 444, 447. When the necessity for such immediate action ceases, the state of facts ceases to be an emergency. The agency then ceases. The extent of the emergency is a matter of fact to be determined by the circumstances in each case. * * * "

You do not inform us of all surrounding circumstances. We would assume that the board of county commissioners of your county is holding at least the statutorily scheduled meetings and are able to consider the matter of the necessity of the appointment of such deputies at any of such meetings. On such basis we would conclude that the annual appointment and reappointment of such deputies as are described in your letter would require the resolution specified in the above quoted section 11-10-11 at least by the time the county commissioners have had opportunity to adequately consider the matter.

We hope the within and foregoing will be sufficient for your purposes.

Sincerely yours,

Helgi Johanneson

Attorney General